

# New Hampshire Department of Revenue Administration

## Fiscal Note Quick Guide

15-0132

**HB 438-FN**, *exempting proprietorships from taxation under the business profits tax.*

House Way & Means Committee

This bill exempts proprietorships from taxation under the Business Profits Tax (BPT). The Department of Revenue Administration used the biennial budget amounts estimated for FY 2015 for the BPT as the base for estimating the reduction in revenue due to the proposed exemption in the BPT.

This bill would take effect July 1, 2015, the start of FY 2016. The budget estimates that the State will receive \$340,500,000 in BPT revenue for FY 2105. BPT paid by proprietorships has averaged 5% of total BPT revenue, which would be \$17,025,000 of the projected \$340,500,000. If the proprietorship portion is exempt, BPT revenue would be reduced by \$17,025,000 in FY 2016.

For FY 2017 and beyond, the fiscal impact is indeterminable, but it would be reasonable to assume that similar revenue reductions would occur.

The Department of Revenue Administration notes that the effective date of this bill is July 1, 2015. The Department recommends that the bill language provide an applicability section. For example, “[T]his act shall be in effect for taxable periods ending on or after December 31, 2015.”

The Department also notes that the proposed change to exempt proprietorships from the BPT appears to classify taxpayers as opposed to classifying property received and legal precedent indicates that a constitutional challenge could be made. “Distinctions in tax treatment must rest upon reasonable classifications of property, not upon classifications of taxpayers owing a common class of property.” Opinion of Justices, 132 N.H. 777 (1990), citing Opinion of Justices, 115 N.H. 306 (1975).

This bill could be administered by the Department without any additional cost that could not be absorbed within our estimated budget.